

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 WORKFLOW SOLUTIONS, LLC, dba) Civil No. 08-1880-IEG(LSP)
12 WORKFLOWONE,)
13)
14 Plaintiff,) ORDER TO RESPOND TO
15) PLAINTIFF'S EX PARTE
16) APPLICATION
17 v.)
18)
19 GEORGE RIFFEL,)
20)
21 Defendant.
22
23
24
25
26
27
28

19 On October 16, 2008, Plaintiff Workflow Solutions ("Plain-
20 tiff") filed an Ex Parte Application for An Order To, *inter alia*,
21 Expedite Discovery ("Ex Parte App.") On November 5 and 12, 2008, the
22 Court held a Status Conference and Settlement Conference in this
23 action.

24 The Court, having reviewed Plaintiff's Ex Parte App., and
25 GOOD CAUSE APPEARING, HEREBY ORDERS Defendant George Riffel
26 ("Defendant") to respond in detail under penalty of perjury to each
27 contention alleged in Plaintiff's Ex Parte App. Riffel's response
28 shall be annotated to all documents, including e-mails, which

1 substantiate his position. Riffel's response shall be filed with
2 the Court and served on opposing counsel on or before January 12,
3 2009. With regard to 4 (a)-(e) below, all documents responsive to
4 Plaintiff's requests shall be produced to the Court in unredacted
5 and unedited form. Responses shall be filed and served to the
6 following:

7 1. Pre-Settlement Improper Disclosures/Use of Confidential Informa-
8 tion

9 1(a). Plaintiff alleges that in April 2008, prior to the
10 settlement of the underlying case, Defendant disclosed the 7%
11 pricing discount he had offered on behalf of Defendant to Brookstone
12 "2 weeks before (he was) downsized." Defendant then incorporated
13 the same 7% discount in Smart Source's agreement with Brookstone,
14 which enabled Smart source to match Brookstone's pricing discount,
15 (Ex. G to Ex Parte App.)

16 1(b). In April 2008, Defendant improperly obtained confiden-
17 tial information about Brookstone's on-going product orders from
18 Defendant's customer service representative Anna Ching ("Ching").
19 Defendant used that information as a basis for telling Scott Alton
20 ("Alton") to limit the orders from Defendant and reduce overall
21 product inventory with Defendant, which thereafter Brookstone did.
22 (Ex. F to Ex Parte App.)

23 1(c). In April 2008, Defendant disclosed confidential
24 information about Plaintiff's plans to move inventory to another
25 warehouse in a few days. Defendant then advised Alton to demand that
26 "all inventory stays put until Father's Day." (Ex. F to Ex Parte
27 App.)

28 1(d). After the settlement of the underlying case Defendant

1 gave Alton confidential information about Plaintiff's pricing and
2 profit margins: "The bag and battery profits have traditionally
3 funded this program in the most part so losing margin here would
4 really hurt the health of the program." (Ex. H to Ex Parte App.)

5 1(e). Defendant asked Alton to get him the user name and
6 password to access Plaintiff's confidential customer website. (Ex.
7 I to Ex Parte App.)

8 2. Targeting Plaintiff's Employees

9 2(a). Defendant assured Alton that, as of May 22, 2008, "we
10 have everything lined up and ready to go, including support
11 personnel." (Ex. L to Ex Parte App.)

12 2(b). On July 29, 2008, Ching announced her plan to resign
13 from Plaintiff, after receiving a telephone call from Alton.
14 (Declaration of Bob Abbonzio in support of Ex Parte App.) Until
15 Ching was on board at Smart Source, Defendant was expected to manage
16 the new Brookstone account. (Ex. P to Ex Parte App.)

17 2(c). Defendant called Defendant's Account Executive Dave
18 Hunt, told Hunt that the Brookstone account was moving to Smart
19 Source, and asked about Hunt's plans and options after a recent
20 change to Hunt's compensation plan at Plaintiff. Smart Source was
21 actively recruiting Hunt, who was Plaintiff's lead account executive
22 for Brookstone. (Declaration of Bob Abbonzio in support of Ex Parte
23 App.)

24 3. False, Misleading, Disparaging Statements about Plaintiff

25 3(a). Defendant told Alton and Brookstone that Plaintiff
26 had decided to "exit the vertical retail market" business model and
27 revert to a "manufacturing mentality." (Ex. S to Ex Parte App.)
28 Defendant claimed that Plaintiff had terminated the employment of

1 nearly every employee who was part of the vertical retail market
2 team, beginning with himself. These statements were false. Plaintiff
3 terminated Defendant's employment because Defendant misappropriated
4 money through false business expenses. Plaintiff did not terminate
5 Ching's employment and did not terminate others identified by
6 Defendant.

7 3(b). Prior to settlement of the underlying case, on
8 April 17, 2008, Defendant told Alton that Plaintiff had "down sized"
9 him. Defendant did not tell Alton that his employment was termi-
10 nated due to Defendant's misappropriation of money through false
11 business expenses.

12 3(c). On June 8, 2008, Defendant wrote to Alton and
13 reasserted that he was "down sized" by Plaintiff, and that "the
14 expense account was the vehicle they used as only an excuse." (Ex.
15 R to Ex Parte App.) Alton apparently had learned that Defendant had
16 misled him about the true reason for Defendant's termination from
17 Plaintiff.

18 3(d). On June 8, 2008, Defendant told Alton that Plaintiff
19 would now "run the accounts until the profit margins suffer and they
20 completely abandon the vertical." (Ex. R to Ex Parte App.) This
21 statement was untrue.

22 3(e). On July 24, 2008, after the settlement of the
23 underlying case, Defendant gave Alton "reasons to move" from
24 Brookstone:

25 1. Defendant claimed a "change in Plaintiff's business
26 model from vendor neutral distribution model to manufacturing
27 mentality" and "loss of retail vertical market focus."

28 2. Defendant claimed an unspecified "High level

1 management change and culture change."

2 3. Defendant claimed "Recent price increases on
3 shopping bags" - which Alton recognized as "bum" information.

4 (Ex. S to Ex Parte App.)

5 3(f). On August 10, 2008, Defendant prepared talking
6 points for Smart Source's meeting with Brookstone after Brookstone
7 apparently began to question whether Defendant and Alton had worked
8 out an "inappropriate" deal.

9 1. Defendant claimed that "(Plaintiff) will try
10 anything to prevent the loss of the Brookstone account to SS or GR.
11 Even though they are for sale and exiting the retail vertical market
12 they will stop at nothing to prevent the account from joining SS."

13 (Ex. T to Ex Parte App.)

14 2. Defendant claimed that the 7% discount Smart
15 Source gave Brookstone was "far more grater[sic] than what would
16 have occurred had they stayed with Plaintiff." In fact, Defendant
17 had offered the same 7% discount on behalf of Plaintiff two weeks
18 before Plaintiff terminated Defendant's employment. (Ex. F to Ex
19 Parte App.)

20 3. Defendant claimed that Plaintiff would "institute
21 release charges, line item charges and storage charges soon," when
22 his interference with the Brookstone account, causing a huge loss,
23 is what led to the need for such charges. (Ex. T to Ex Parte App.)

24 4. Defendant claimed that "SS has hired the account
25 management team and a few members of the retail vertical market
26 team" In fact, Defendant had been trying to help Smart Source hire
27 these people, but did not succeed.

28 5. Defendant claimed that "(Plaintiff) has terminated

1 all the members of the retail vertical market team except for one."
2 In fact, Plaintiff had terminated Defendant. Plaintiff did not
3 terminated Ching's employment, nor Ed Violoria's employment.

4 4. Selective Production and Withholding Records

5 4. When Plaintiff and Defendant tried to resolve the
6 current dispute, Defendant selectively produced some documentation
7 that Plaintiff requested.

8 4(a). Plaintiff refused to produce his complete business
9 plan from March 2008. (Ex. K to Ex Parte App.)

10 4(b). Defendant had communications through other email
11 addresses, but he did not produce any such communications. (Ex. V to
12 Ex Parte App.)

13 4(c). Defendant had communications using Yahoo! Messenger,
14 but did not produce any such communications. (Exs. W, L to Ex Parte
15 App.)

16 4(d). Defendant withheld 2 pages of unspecified informa-
17 tion. (Ex. X to Ex Parte App.)

18 4(e). Defendant withheld at least 55 pages of "intro
19 letters," a "brochure," power point materials and other unspecified
20 documents, which he apparently used in connection with a sales
21 presentation to Plaintiff's customer, Perfumania. (Ex. Y to Ex Parte
22 App.)

23 DATED: December 19, 2008

24
25
26
27
28



Hon. Leo S. Papas
U.S. Magistrate Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28